

Docket No. 030782-4  
Application No. 10/801,039  
Page 7

### REMARKS/ARGUMENTS

The Examiner's Office Action of June 15, 2005 has been received and carefully considered. Prior to this amendment, claims 2-13 and 30-36 were pending in the application. By this amendment, claim 11 is amended, and new claims 37-47 are added.

In the Office Action, it is contended that, "This application contains claims directed to the following patentably distinct species of the claimed invention: I. the embodiment of Figs. 2A and 2B; II. the embodiment of Fig. 3; III. the embodiment of Figs. 4A and 4B; IV. the embodiment of Figs. 5A and 5B; and, V. the embodiment of Fig. 6." In response to the Examiner's election requirement, Applicant provisionally elects the embodiment of Group I, i.e. Figs. 2A and 2B, with traverse for the reasons discussed below.

Applicant respectfully submits that the Examiner's election requirement is untimely. Chapter 37, section 1.142(a) of the United States Code of Federal Regulations, clearly provides that "[i]f the distinctness and independence of the invention be clear, such requirement will be made before any action upon the merits. The Manual of Patent Examination and Procedure (MPEP), § 808.01(a) provides that, "Election of species should be required prior to a search on the merits (A) in all applications containing claims to a plurality with no generic claims, and (B) in all applications containing both species claims and generic or Markush claims." See also, MPEP § 810.02, (The Office policy is to usually defer action on the merits until after the requirement for restriction is complied with, or withdrawn.) It cannot fairly be said that, in this case, at the time of issuing the first Office Action on the merits, it was not clear to the examiner as to whether the invention should be considered to be independent and distinct.

Second, the examiner has not provided Applicant with any reasoning why the species are considered to be distinct, nor any reason for insisting upon restriction. It is clear from MPEP § 808, however, that every requirement to restrict has two aspects: (A) the reasons (as distinguished from mere statement of conclusion) why the inventions as claimed are either independent and distinct; and (B) the reasons for insisting upon restriction. The Examiner has provided Applicant with absolutely no reason why election is now, at this late stage, required.

For these reasons, Applicant respectfully submits that the election requirement is improper. Should the Examiner maintain the election requirement despite the present

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Docket No. 030782-4  
Application No. 10/801,039  
Page 8

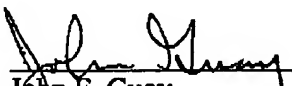
amendment, Applicant respectfully requests that the Examiner make of record the reasoning why the species of the claimed invention are considered to be distinct, and the reason for insisting upon restriction, as required.

In the Office Action, it is contended that there appear to be no generic claims. Applicant submits, however, that claim 9 is generic to each of the species of the identified Groups I-V.

For these reasons, the election requirement is traversed.

To advance the allowance of this case, claim 11 is amended to depend from allowable claim 9. Claim 9, therefore, is the only independent claim pending in the application. Applicant has added new claims 37-47 which correspond to previously canceled subject matter, but which is now dependent on allowable claim 9. Inasmuch as claims 2-13 and 30-47 depend, either directly or indirectly, from allowable claim 9, Applicant submits that these claims are also now in condition for allowance. In view of the foregoing, Applicant submits that claims 2-13 and 30-46 are in condition for allowance. An early Notice of Allowance is requested.

Respectfully submitted,

  
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